



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/631,059

07/31/2003

Don Rutledge Day

AUS920030562US1

3506

45502 7590 07/06/2009

DILLON & YUDELL LLP  
8911 N. CAPITAL OF TEXAS HWY.,  
SUITE 2110  
AUSTIN, TX 78759

EXAMINER

WHIPPLE, BRIAN P

ART UNIT

PAPER NUMBER

2452

MAIL DATE

DELIVERY MODE

07/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* DON RUTLEDGE DAY, ROBERT J. KAMPER,  
and LARRY DON SWOFFORD

---

Appeal 2008-005100  
Application 10/631,059  
Technology Center 2400

---

Decided<sup>1</sup>: July 6, 2009

---

Before HOWARD B. BLANKENSHIP, JAY P. LUCAS, and  
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL

---

<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

### STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-20, which are all the claims in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

#### *Invention*

Appellants' invention relates to a method, system, and article of manufacture for managing a messaging session (Fig. 4; Spec. ¶ [0016]). The method detects an input device activity by a participant with a messaging application (Fig. 4, 405; Spec. ¶ [0030]). An internal timer within the messaging application is reset in response to detecting the input device activity by the participant with the messaging application (¶ [0030]). When the internal timer exceeds a specified time limit, the method determines that the participant has disengaged activity in the messaging session (Fig. 4, 410; Spec. ¶ [0030]). A current activity of the participant is determined by determining what application is receiving the input device activity by the participant (Fig. 4, 425; Spec. ¶ [0031]). A preference set by the participant that determines how a status indication is displayed to a message recipient is detected (Figs. 3 and 5; Spec. ¶ [0032]). The status indication is transmitted in accordance with the preference to the message recipient in the messaging session, wherein the status indication indicates the current activity of the participant (Fig. 4, 430; Spec. ¶ [0032]).

*Representative Claims*

1. A method in a data processing system for managing a messaging session, said method comprising the steps of

- detecting an input device activity by a participant with a messaging application;
- resetting an internal timer within the messaging application in response to said detecting the input device activity by the participant with the messaging application;
- in response to said internal timer exceeding a specified time limit, determining the participant has disengaged activity in the messaging session;
- determining a current activity of the participant, wherein said determining further comprises determining what application is receiving the input device activity by the participant;
- detecting a preference set by the participant, wherein said preference determines how a status indication is displayed to a message recipient; and
- transmitting the status indication in accordance with said preference to a message recipient in the messaging session, wherein the status indication indicates the current activity of the participant.

4. The method according to claim 1, wherein the message recipient specifies how the status indication is presented to the message recipient.

*Prior Art*

Theimer	5,493,692	Feb. 20, 1996
Horvitz	2004/0003042 A1	Jan. 1, 2004
Daniell	2004/0158609 A1	Aug. 12, 2004

*Examiner's Rejections*

Claims 1-3, 5-9, 11-15, and 17-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Daniell and Horvitz.

Claims 4, 10, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Daniell, Horvitz, and Theimer.

*Claim Groupings*

Based on Appellants' arguments in the Appeal Brief, we will decide the appeal on the basis of claims 1 and 4. Claims not argued separately will stand or fall with their respective base claims. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUES

(1) Have Appellants shown that the combination of Daniell and Horvitz fails to teach “determining a current activity of the participant, wherein said determining further comprises determining what application is receiving the input device activity by the participant,” as recited in claim 1?

(2) Have Appellants shown that the combination of Daniell, Horvitz, and Theimer fails to teach “the message recipient specifies how the status indication is presented to the message recipient,” as recited in claim 4?

## FINDINGS OF FACT

### *Horvitz*

1. Horvitz discloses a system that can identify when a user is checking email or reviewing a notification (§ [0072]).

### *Theimer*

2. Theimer discloses a method that evaluates a message based on the context of the recipient and the priority of the message, and determines a display property which indicates how a message should be delivered, if at all (Fig. 17; col. 25, ll. 27-30).

3. Theimer also discloses that a user's personal profile and policies may specify that calendar-type messages be displayed when possible on the smallest display device available (Fig. 16; col. 24, ll. 29-31).

## PRINCIPLES OF LAW

### *Claim Interpretation*

During examination, claims are to be given their broadest reasonable interpretation consistent with the specification, and the language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Amer. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted). The Office must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification. *Id.* (citing *In re Bass*, 314 F.3d 575, 577 (Fed. Cir. 2002)).

### *Obviousness*

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007).

### ANALYSIS

#### *Section 103 rejection of claim 1*

Appellants contend Horvitz does not teach using sensed computer events to determine which application is receiving input device activity by the participant (Br. 7). Therefore, Appellants contend that the combination of Daniell and Horvitz does not render obvious “determining what application is receiving the input device activity by the participant” as required by claim 1 (*id.*).

The Examiner found that Horvitz can determine what application is receiving input device activity by a participant (Ans. 8-9), such as identifying when a user is checking email or reviewing a notification (FF 1). Appellants have failed to address this finding by the Examiner. The claim term “determining what application is receiving the input device activity by the participant” is broad enough to include determining that a user is checking email or reviewing a notification as disclosed by Horvitz, and Appellants have provided no evidence to the contrary.

Appellants further contend that because Horvitz does not teach determining what application is receiving input device activity by a participant, it would not be obvious to a person of ordinary skill in the art to modify Daniell to include the step of determining what application is receiving input device activity based on the teachings of Horvitz (Br. 8). This contention is factually incorrect, Horvitz does teach “determining what application is receiving the input device activity by the participant” (FF 1). Appellants have failed to address this teaching of Horvitz.

Therefore, the Examiner correctly found that the combination of Daniell and Horvitz teaches “determining what application is receiving the input device activity by the participant” as required by claim 1. Appellants have failed to rebut the Examiner’s prima facie case of obviousness. We therefore sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 103(a).

*Section 103 rejection of claim 4*

Appellants contend that Theimer does not disclose or teach that the message recipient specifies how the status indication is presented to the message recipient as required by claim 4 (Br. 9). The Examiner found that Theimer determines a display property which indicates how a message should be delivered (Ans. 11; FF 2), and that a user’s personal profile can specify that the message is delivered to the smallest display device available (Ans. 11; FF 3). Appellants have failed to address these findings by the Examiner. The claim term “the message recipient specifies how the status indication is presented to the message recipient” is broad enough to include



the message recipient specifies that the message is presented on the smallest available display device as taught by Theimer, and Appellants have presented no evidence to the contrary.

Therefore, the Examiner correctly found that the combination of Daniell, Horvitz, and Theimer teaches “the message recipient specifies how the status indication is presented to the message recipient” as required by claim 4. Appellants have failed to rebut the Examiner’s prima facie case of obviousness. We therefore sustain the Examiner’s rejection of claim 4 under 35 U.S.C. § 103(a).

#### CONCLUSIONS OF LAW

(1) Appellants have not shown that the combination of Daniell and Horvitz fails to teach “determining a current activity of the participant, wherein said determining further comprises determining what application is receiving the input device activity by the participant,” as recited in claim 1.

(2) Appellants have not shown that the combination of Daniell, Horvitz, and Theimer fails to teach “the message recipient specifies how the status indication is presented to the message recipient,” as recited in claim 4.

#### DECISION

The Examiner’s rejection of claims 1-3, 5-9, 11-15, and 17-20 under 35 U.S.C. § 103(a) as being unpatentable over Daniell and Horvitz is affirmed.

The Examiner’s rejection of claims 4, 10, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Daniell, Horvitz, and Theimer is affirmed.

Appeal 2008-005100  
Application 10/631,059

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

msc

DILLON & YUDELL LLP  
8911 N. CAPITAL OF TEXAS HWY.  
SUITE 2110  
AUSTIN TX 78759